

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:06CV394

MARTINA CLARK,)	<u>ORDER</u>
)	
Plaintiff,)	
Vs.)	
USDA-RHS (lienholder), and)	<u>ORDER</u>
PALMER HUFFSTETLER, JR.)	
(Substitute Trustee),)	
Defendants.)	

THIS MATTER is before the Court on the Defendants' motions for an extension of time within which to file answer and to consolidate and the Plaintiff's motions for an evidentiary hearing and sanctions.

On June 13, 2006, the Plaintiff in this action, Martina Clark, removed a state foreclosure action to this Court. **See, Civil No. 1:06CV188, U. S. Dept. Of Agriculture-Rural Housing Service (USDA-RHS) v. Brooks and Clark.** Although the action is captioned against Brooks and Clark, only Clark signed the notice of removal. The foreclosure was scheduled against real estate owned by Brooks in connection with a loan extended to

Brooks. In dismissing that action, the undersigned noted that “Brooks has not submitted anything to this Court despite the fact that she is the only debtor disclosed in the matters filed with this Court. The Court simply cannot deduce from this record what standing, if any, Clark has to remove this matter.” **Order of Dismissal, filed June 15, 2006.** The action was remanded to state court.

On November 3, 2006, Clark initiated a lawsuit in the Charlotte Division against the USDA-RHS making the same allegations as she made in the notice of removal in Civil No. 1:06CV188. **See Civil No. 3:06CV457, Clark v. USDA-RHS.** The complaint in that action was signed only by Clark; Brooks does not appear as a party. Every document attached to that complaint refers to Brooks as the borrower of the loan and owner of the real property. The only mention of Clark is in a reference to her as a “third party” in a Director Review Determination attached as Exhibit C to the complaint. Clark alleges in the complaint that she is a record owner of the property; however, no such proof is attached to the complaint. This action is pending before Chief U.S. District Court Judge Robert Conrad in the Charlotte Division.

On December 22, 2006, the USDA-RHS removed this action from the General Court of Justice, Superior Court Division of Cleveland County.

See Notice of Removal and Exhibits, filed December 22, 2006. In this complaint, Clark also alleges that she is a record owner of the real estate; but again, no such proof is attached.¹ The allegations of this complaint involve the same facts as involved in the previously filed Charlotte Division action. The Court will, therefore, consolidate this action with the Charlotte Division case and will respectfully refer these matters to Chief Judge Conrad.

IT IS, THEREFORE, ORDERED that the above-captioned action is hereby **CONSOLIDATED** with Civil Case No. 3:06CV457, and the Clerk is directed to reassign this matter to Chief Judge Conrad.

IT IS FURTHER ORDERED that the time within which the Defendants must answer is hereby extended until such date as designated by Chief Judge Conrad.

¹Clark's status as a "third party" under the USDA regulations has no impact on the issue of whether she is, as she represents, a record owner of the real estate. The issue is whether Clark has misrepresented in pleadings filed in this Court her status as an owner.

IT IS FURTHER ORDERED that Clark's motion for an evidentiary hearing is hereby **DENIED**.²

IT IS FURTHER ORDERED that Clark's motion for sanctions is hereby **DENIED** as frivolous.

Signed: February 23, 2007



Lacy H. Thornburg
United States District Judge



²Clark mistakenly filed a motion to withdraw this motion in the Charlotte Division action.